In the High Court of Punjab and Haryana, Chandigarh.

Civil Revision No.3271 of 2007

Date of Decision: 4.10.2007.

Bhupinder Singh

…Petitioner.

Versus

Pargat Singh and Another

…Respondents.

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Vikas Bahl, Advocate
for the petitioner.

Mr.Vijay Lath & Mr.Naveen Sharma, Advocates
for respondent No.1.

RAJESH BINDAL, J.

The challenge in the present petition is to the order dated January 2, 2007 passed by the learned Civil Judge (Junior Division), Nawanshahar, whereby the application for amendment of the suit, filed by the petitioner/plaintiff, was dismissed.

Briefly, the facts are that the petitioner/plaintiff filed a suit for permanent injunction restraining the respondent/defendant No.1 from demolishing khala/drain, shown in the site plan annexed with the plaint, or from changing the flow and course of the same. In an application filed under Order 39 Rules 1 & 2 CPC, the learned trial Court, vide order dated September 9, 2005, restrained the respondent/defendant No.1 from demolishing or changing the flow in the existing drain, over the spot. Thereafter, the trial of the suit continued. However, as per the allegations of the petitioner/plaintiff, during the period he was away to New Zealand, the

respondent/defendant No.1 demolished the khala/drain and as consequences thereof, the petitioner/plaintiff moved an application for amendment of the plaint for seeking relief of mandatory injunction. The necessity for filing of the application for amendment of the plaint arose as the subsequent events have taken place during the pendency of the suit before the Court. However, the learned trial Court did not find favour with the prayer made by the petitioner/plaintiff and dismissed the application, vide impugned order dated January 2, 2007. The primary reason for dismissal of the application was that even the issues had been framed; the Gram Panchayat, in fact, had already constructed the pucca drain, thereafter, even the evidence has been led by the plaintiff and that no date of demolition of the khala/drain was furnished.

Learned counsel for the petitioner submitted that in the present case, the reasons mentioned by the learned trial Court, for rejecting the prayer made by the petitioner/plaintiff for amendment of the plaint, are totally imaginary and baseless. While passing the order in the application filed by the petitioner/plaintiff for interim relief under Order 39 Rules 1 & 2 CPC, the entire material was considered and it was directed that respondent No.1 is restrained from demolishing or changing the flow in the existing drain, over the spot. Meaning thereby that the drain was in existence on the date when the interim directions were given by the learned trial Court. It was, thereafter, on account of demolition of the drain, during the period when the petitioner/plaintiff was out of Country, the need of amendment of the plaint arose for seeking the relief of mandatory injunction as well. It is submitted that the law for amendment of the plaint is quite liberal as has been held by Hon'ble the Supreme Court in **Rajesh Kumar Aggarwal & Others v. K.K. Modi & Others 2006(2) RCR (Civil) 577**.

On the other hand, learned counsel for the respondent/defendant No.1 submitted that in fact, the prayer made in the suit filed by the petitioner/plaintiff has become infructuous as in terms of the stand taken by him in the written statement filed, the drain had already been demolished by the Gram Panchayat and further the petitioner/plaintiff having not furnished the date on which the alleged demolition took place, the amendment application was not bonafide. He has relied upon **Ajendraprasadji N. Pande & Another v. Swami Keshavprakeshdasji N. & Others AIR 2007 SC 806; Sukhdev Singh v. Bal Krishan 2005(1) RCR (Civil) 459 (P&H); Ramesh Ramanujam & Others v. Varadammal & Others 2005(2) RCR (Civil) 761**

(Mad.), and **Ashok Chandra Srivastava v. Master Ashish Kumar alias Banti & Others 2005(1) RCR (Civil) 429 (Allah.)**, to submit that after the trial had commenced, the amendment of the plaint in question could not possibly be allowed as the fact regarding demolition of drain was well within the knowledge of the petitioner/plaintiff before the trial had begun with the framing of issues.

Having heard learned counsel for the parties, I find merit in the contentions raised by the learned counsel for the petitioner. The suit was filed by the petitioner/plaintiff on October 1, 2004. The issues in the present case were framed by the learned trial Court vide order dated August 1, 2005 when the matter was adjourned to September 9, 2005 for consideration of the application for interim injunction. On consideration of the prayer for interim injunction, the learned trial Court, vide order dated September 9, 2005, restrained respondent/defendant No.1 from demolishing or changing the flow in the existing drain over the spot. Meaning thereby that as per the facts found by the learned Court below, the drain was existing on that date. It is admitted position on record that the respondent/defendant No.1 never challenged the interim order passed by the learned Court below. Under these circumstances, the contention of learned counsel for the respondent/defendant No.1 that as per the pleadings of the parties, in fact the drain already stood demolished by the Gram Panchayat, is totally baseless. Once it is found that after the trial had commenced, the application filed by the petitioner/plaintiff for amendment of the suit raising the plea that during the pendency of the suit, the drain has been demolished and consequently prayer for the relief of mandatory injunction, was certainly the development, which has taken place after the trial of the suit had commenced and the petitioner/plaintiff was legally entitled to file such an application for amendment of plaint and claim relief of mandatory injunction as well.

There is no weight in the contentions of the learned counsel for the respondent No.1 that the petitioner/plaintiff in the present case was not vigilant as the events sought to be brought on record had happened prior to commencement of trial of the suit. Even the judgments relied upon by learned counsel for the respondent/defendant No.1 are distinguishable on the facts where the issues were about the due diligence by the party who sought amendment on account of facts, which were existing and were in knowledge of the party concerned before the commencement of the trial. The facts of the present case are quite different as the events, which are sought to be added

by way of amendment, have taken place after the commencement of the trial.

Accordingly, the revision petition is accepted and the impugned order dated January 2, 2007 passed by the learned trial Court is set aside. Consequently, the amendment application filed by the petitioner/plaintiff is accepted. The parties through their learned counsel are directed to appear before the learned trial Court for further proceedings on November 5, 2007.

The revision petition is disposed of in the manner indicated above.

(Rajesh Bindal)
Judge

October 4, 2007
"DK"